

Is the marriage contract valid if a woman was on her menses?

Shaykh Sulaymān al-'Alwān(حفظه الله) responded by saying: By principle, that is considered permissible, and the prohibition isn't present from the Qur'ān, Sunnāh, Ijmā', saying of a Sahābī or valid Qiyās(analogy). And I do not know anyone from the scholars who prohibited or disliked that. Besides that some of the Fuqahā' disliked a woman to arouse her husband during menses, so that he doesn't fall into sin from doing anything further. [Note: You can do everything together, except Jimā']

And some of the layman can mix up the ruling of this issue with the ruling of divorce during menses, however there isn't any correlation between the two matters.

So the marriage contract while she's menstruating is permissible by the agreement of the scholars, and divorcing her during her menses is harām by the agreement of the scholars.

And there are 2 sayings whether the divorce takes place or not (during her menses):

1. That it occurs with it being harām and this is the saying of the 4 Imāms and the majority of the scholars.
2. That it doesn't occur, which is the madhab of the Dhāhiriyyāh which was supported by Shaykh al-Islām ibn Taymiyyāh(رحمه الله) and ibn al-Qayyīm(رحمه الله).

And every side from the 2 groups have mentioned their evidences with textual proof and reasoning, and after researching the evidences of both sides, and searching for the core evidences, and pondering over the Madhāhib(opinions) of the contemporary & classical scholars, and reading lengthy & summarised books regarding that, I saw strength(stronger proofs) in the second Madhab(opinion), and that it has better proofs which correlates with the fundamentals of the sharee'ah.

And I have concluded that the Hadīths which are narrated to the Prophet(صلى الله عليه وسلم) don't have anything from it which is clear regarding the issue, even though what's apparent from it(the hadīths) in my view shows that it doesn't count as a divorce.

And the Mawqūf reports to ibn 'Omar(رضي الله عنهما) are contradictory and most of it isn't authentic, with the chances that it's referring to the latter view[the hadīths show that divorce doesn't occur], and Allāh(جل و علا) knows best.